

**BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001**

Nooksack Post Office,
Nooksack, Washington 98276

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DOCKET NO. A2011-17

**ANSWER OF THE PETITIONER, THE CITY OF NOOKSACK,
IN OPPOSITIN TO POSTAL SERVICE MOTION TO DISMISS**

(June 7, 2011)

I. INTRODUCTION

Pursuant to Rule 21 of the Commission's Rules of Practice, the Petitioner, the City of Nooksack, hereby files its Answer in Opposition to the Motion by the Postal Service to Dismiss the City of Nooksack's Appeal.

The Postal Service bases its Motion to Dismiss upon two grounds. First, the Postal Service repeats its standing position that the provisions of 39 U.S.C. §404(d)(5) authorizing Commission review of post office closings do not apply to the closing of the Nooksack, Washington facility because the facility is not a "post office" but rather a classified station. Second, the Postal Service argues the Nooksack facility has not been closed or discontinued but only suspended on an emergency basis. The Postal Service

serts that only closures, not emergency suspensions, are subject to review by the Commission. Neither of these grounds supports dismissal of the pending appeal.

II. ARGUMENT

A. The Commission Has Jurisdiction Over Station and Branch Closures.

The Nooksack Post Office, despite being referred to as a Classified Station by the Postal Service, is a post office as the term is ordinarily used and meets the definition of a “post office” that the Postal Regulatory Commission used in orders concerning appeals of post office closings. Docket No. A2006-1, *In re Observatory Finance Station*, Order Denying Motion to Dismiss and Remand For Further Consideration (September 29, 2006); Docket No. A83-30, *In Re Knob Fork*, WV Com’n Op. Remanding Determination for Further Consideration 39 U.S.C. §404(b)(5) (January 19, 1984). The Commission has repeatedly rejected the Postal Service’s assertions that stations and branches are not “post offices” under section 405(d)(5). See also, *Station and Branch Optimization and Consolidation Initiative 2009*, Docket No. N2009-1. The Nooksack Post Office is a retail facility where customers may purchase postal services, and dispatch and receive mail. It is the only such postal facility located within the City of Nooksack and closure of the Nooksack post office will leave the City of Nooksack without a post office. Accordingly, this ground for summary dismissal should be summarily rejected.

B. The Postal Service Has Failed to Establish the Closure of the Office is an Unrenewable Emergency Suspension.

In its Motion to Dismiss, the Postal Service argues the closure of the Nooksack facility is in reality an emergency suspension, not a permanent closure. Not only is this argument unsupported, it is, in fact, contradicted by a prior Postal Service filing in this proceeding as well as by written and verbal Postal Service representations to customers of the Nooksack facility. Moreover, the Postal Service terminated the lease of the Nooksack post office. Thus, the circumstances upon which the Postal Service claims an emergency suspension were in fact caused by actions taken by the Postal Service.

On January 1, 1994, the Postal Service adopted the Post Office Discontinuance Guide, Handbook. PO-101 (Discontinuance Handbook). *U.S. Gen. Accounting Office U.S. Postal Service: Information on Post Office Closures, Appeals, and Affected Communities*, GAO/GGD-97-38BR (March 11, 1997). The Discontinuance Handbook provides guidance regarding the proper procedures for suspending and closing a post office. Chapter 6 of the Discontinuance Handbook sets forth the procedures applicable to emergency suspensions. Discontinuance Handbook Section 611 defines “Emergency” as follows:

An emergency is an occurrence that constitutes a threat to the safety and health of Postal Service employees or customers or to the security of the mail or revenue. When a situation is tolerated for an extended term or is expected to occur, it probably cannot be classified as an emergency.

Discontinuance Handbook Section 661 also provides a non-exclusive list of circumstances that may justify an emergency suspension. The list as set forth at Section 611 is as follows:

- a. Natural disaster.
- b. Termination of a lease or rental agreement when other quarters suitable for housing an independent post office are not available, especially when the termination is sudden or unexpected.
- c. Lack of qualified personnel to operate the office.
- d. Severe health or safety hazard.
- e. Severe damage to, or destruction of, the office.
- F Lack of adequate measures to safeguard the office or its revenues.

Under the foregoing provisions, emergency suspensions are not appropriate when the termination of a lease is expected and suitable alternative quarters are available.

The authority to impose an emergency suspension is held by the District Manager with jurisdiction over the post office at issue.

Several notices are required in order to suspend the operation of a post office. Discontinuance Handbook Section 613.1 requires immediate notification of Postal Service headquarters. Local officials must also be notified. Postal customers are to be notified of the suspension immediately by individual letter. The customer notice is to include: the effective date of the suspension; the reasons for the suspension; alternative services available; identification of the nearest post office and hours of operation; and the name and phone number or a person to contact for more information.

In the instant case on April 1, 2011, notice was posted at the Nooksack post office advising patrons of a “possible change in the way postal services are provided....”. *City of Nooksack Petition for Review, May 16, 2011 (Petitioner for Review) at Exhibit B*. The April 1st notice also indicated that a public meeting was to be held on April 7, 2011, to discuss alternatives to existing postal services. *Id.* There was no mention of any need for an emergency suspension in the April 1st notice.

On April 2, 2011, postal patrons received a questionnaire regarding their mailing practices. The April 2nd questionnaire indicated that the Postal Service was considering closure of the Nooksack post office. There was no mention in the April 2nd questionnaire of any need for an emergency suspension of the Nooksack post office's operations.

On April 7, 2011 the Postal Service convened the public meeting announced in its April 1st notice. There is no evidence that the need for an emergency suspension was raised by Postal Service personnel at the meeting. Instead, postal patrons were invited to submit comments on the possible closure of the post office. *Petition for Review at 5.*

On May 2, 2011, the City of Nooksack received a letter advising the City and other postal patrons that the Nooksack post office would be vacated May 27, 2011 and requesting patrons to choose whether they wished to have their mail delivered to the Everson, Washington post office or to a curb side box. *Petition for Review, Exhibit A.* The May 2nd letter makes no mention of any need for an emergency suspension. The clear message given by the May 2nd letter was that the Nooksack post office was being closed due to a discretionary determination made by the Postal Service.

During the week of May 16, 2011 work began on the physical relocation of post office boxes from the Nooksack post office to the Everson post office. *Affidavit of Virginia Radder, May 20, 2011.* On May 18, 2011, the Postal Service posted a notice in the Nooksack post office advising patrons "that retail operations at the Nooksack office will cease at the close of business May 27, 2011 and delivery to the post office boxes will cease after May 28, 2011. *Id at Exhibit I.*

It is clear from the foregoing facts that from the outset the objective of the Postal Service was to close the Nooksack post office. This conclusion is reinforced by statements made by the Postal Service in its pleadings it has filed to date in this proceeding. For example, in its response to the City of Nooksack's Application to Suspend Closure of the Nooksack Post Office pending completion of the instant review proceeding, the Postal Service argues, *Inter Alia*, that it has made "numerous arrangements" to implement "the final determination". *Response of the U.S. Postal Service to Petitioner's Application to Suspension of Discontinuance of the Nooksack Branch, Nooksack, Washington 98276*, May 27, 2011 (*Response to the Nooksack Suspension Application*) at 3. The "final determination" referred to by the Postal Service is its final determination to close the Nooksack post office. Indeed, one of the "numerous arrangements" expressly identified by the Postal Service to implement the "final determination" is the Postal Service's termination of the lease for the Nooksack post office. *Id at 3-4*.

Less than 24 hours after filing its response to the Nooksack Suspension Application, the Postal Service filed a supplemental response in which it announced it had "learned recently" that the discontinuance was, in reality not a discontinuance at all, but a suspension and, as such, nonrenewable by the Regulatory Commission. *Supplemental Response of United States Postal Service to Petitioner's Application for Suspension of Discontinuance for the Nooksack Branch, Nooksack, Washington 98276*, May 27, 2011 (*Supplemental Response*). This attempt to recharacterize its actions as a nonrenewable suspension is but a thinly veiled attempt to circumvent the Commission's

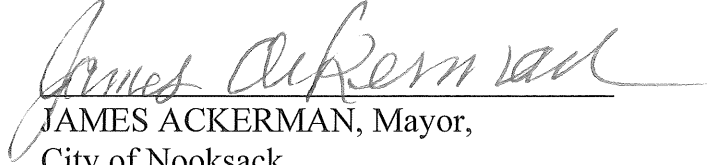
jurisdiction to review Post Office Closings on the basis of a lease termination. In the instant case the Postal Service itself precipitated the “emergency” by invoking its right to terminate the lease on 30 days notice. *Affidavit of Anne Blair in Response to Motion of United States Postal Service to Dismiss Proceedings, June 2, 2011 (Blair Affidavit) at Exhibit J.* The Postal Services’ Notice of Termination was given on April 1, 2011. *Petition for Review at Exhibit C.* This was the same day the Postal Service posted its initial notice in the Nooksack post office of a “possible change in the way postal service would be provided”. The reality is, however, the lease termination that the Postal Service now attempts to use to bootstrap around the instant Commission Review proceedings was part-and-parcel of a final determination to close the Nooksack post office. The Postal Service previously admitted the lease termination was one of the numerous arrangements designed to implement the final determination. *Response to the Nooksack Suspension Application at 3-4.*

III. CONCLUSION

In the instant case the Postal Service began the process of closing the Nooksack post office by terminating the long standing lease it had with its landlord Anne Blair. As Ms. Blair set forth in her June 2, 2011 affidavit the termination came as a surprise and she is willing to enter into a new lease with the Postal Service. Furthermore, under the terms and conditions of the June 1, 2006 lease it would renew itself automatically on a year-to-year basis unless either party gave written notice. Thus the argument that the operations of the Nooksack post office had been suspended for the reasons as contemplated in Section 611 of the Discontinuance Handbook is disingenuous at best.

Wherefore, based on the foregoing, the Petitioner, the City of Nooksack, requests the Commission to deny the Postal Services' Motion to Dismiss.

Respectfully submitted this 6th day of June, 2011.


JAMES ACKERMAN, Mayor,
City of Nooksack